COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.	)	
COMPLAINANT	)	
vs.	)	CASE NO. 97-521
BELLSOUTH TELECOMMUNICATIONS, INC.	)	
DEFENDANT	)	

O R D E R

On December 22, 1997, AT&T Communications of the South Central States, Inc. ("AT&T") filed a Complaint against BellSouth Telecommunications, Inc. ("BellSouth") alleging violations of federal law, PSC Orders, and the parties' interconnection agreement. Subsequently, BellSouth filed a motion to dismiss the Complaint, and motion was denied by Order dated April 8, 1998. A hearing was held on this matter on August 4, 1998. On September 3, both parties filed post-hearing briefs.[1] AT&T requests a declaration of rights, an Order restraining BellSouth from further alleged violations of law, and establishment of a monitoring process pursuant to which BellSouth will provide monthly reports to the Commission regarding its efforts to comply with applicable law, the parties' interconnection agreement, and Commission Orders.

[1] Hereinafter, the "AT&T Brief," and the "BellSouth Brief," respectively.

The Commission's determinations on the issues presented are as follows:

PROVISION OF USAGE RECORDING DATA

One count of AT&T's initial Complaint, concerning BellSouth's alleged refusal to provide recorded usage data for calls made by or billed to AT&T's customers, has essentially been resolved. BellSouth states[2] that it began providing access daily usage files to AT&T on July 24, 1998. BellSouth further states that system changes are necessary before it will be able to provide usage records for intraLATA toll calls carried by BellSouth and terminating to a CLEC's unbundled local switch port. BellSouth predicts that the system changes will be completed by October 31, 1998, and that usage records for these types of calls will then be available. As for flat rate local usage records, BellSouth states that provision of this information would prove unduly burdensome, requiring the billing system to sift through all the flat rate local usage recordings, of which there are approximately three billion per month.[3]

The Commission finds that BellSouth will have met its obligations in this regard after the changes projected to take place on October 31, 1998 have occurred and BellSouth has begun to provide usage records for intraLATA toll calls carried by BellSouth and terminated to a CLEC's unbundled switch port. The information will be sufficient to enable AT&T to bill access charges. Accordingly, AT&T's Complaint on this issue is moot.

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[2] BellSouth Brief at 28-29.

[3] BellSouth Brief at 29.

PROVISION OF ALL FEATURES, FUNCTIONS, AND CAPABILITIES OF THE SWITCH

AT&T contends that there are hundreds of features, functions, and capabilities in a switch and that the ILEC must permit competitors to buy them whether or not the ILEC offers the features, functions, and capabilities to its own customers. AT&T objects to using the bona fide request process prescribed by BellSouth to negotiate terms for items that AT&T wishes to obtain and that are not currently activated in the switch. AT&T points out that its Interconnection Agreement, at Att. 2 Section 7.1.1, entitles it to all features of a switch including "operational features, inherent to the switch and switch software."[4] AT&T also argues that BellSouth must take additional action before assigning a preconstructed feature only when [1] it must pay a right-to-use fee; or [2] it must obtain special permission from the manufacturer.[5] AT&T agrees it should pay any right-to-use fees that apply, but that the bona fide request process is simply unnecessary.[6]

BellSouth argues that AT&T's objection to the bona fide request process -- that it will result in release of confidential information – is immaterial. BellSouth contends that the parties' protective agreement will protect AT&T.[7] Further, BellSouth claims that its agreement with AT&T and the Commission's Orders obligate it to provide only those

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[4] BellSouth contends that the "inherent to the switch and switch software" language refers only to features that have been activated in the switch [Transcript at 290 (Varner)].

[5] AT&T Brief at 31-32.

[6] AT&T Brief at 33, n. 36.

[7] BellSouth Brief at 21.

features that are "activated," and that the complexity involved in engineering any computer, together with administrative costs, add expense to providing a CLEC with a function or feature not currently used by BellSouth.[8] However, BellSouth says it will allow CLECs to buy features it has not activated through the bona fide request process. BellSouth contends that the bona fide request process exists to deal with situations in which the CLEC has requested "a special capability where there is no standard price."[9]

The Commission finds that, although AT&T is entitled by contract and by law to buy functions of the switch whether or not BellSouth offers them at retail, the bona fide request process offers a means by which the parties can ascertain the requirements of providing the feature and determine the appropriate price based on costs incurred by BellSouth, including right-to-use fees and administrative costs. AT&T should pay these legitimate costs involved in activating a feature not currently activated by BellSouth. However, if BellSouth itself, or another CLEC, subsequently begins to use that feature to offer service to its own customers, it must pay a pro rata share of the cost of activation already borne by AT&T. The parties' protective agreement should obviate AT&T's concerns regarding confidential and proprietary matters.

The Commission cautions the parties, however, that it expects the bona fide request process to be completed expeditiously and inexpensively, and that AT&T should request only those features it plans to use. BellSouth objects to AT&T's going directly to the switch manufacturer to obtain currently inactive features, stating its

[8] BellSouth Brief at 22.

[9] Tr. at 293 (Varner).

proprietary interest in its network.[10] The Commission is sensitive to BellSouth's concerns. However, the reasonable alternative to giving the CLEC direct access is ensuring the CLEC that its requests will be handled smoothly and expeditiously. Should the bona fide request process prove in practice to be unnecessarily lengthy, it might be necessary in the future for AT&T to negotiate directly with the switch manufacturer without using BellSouth as a "middleman."

If difficulties regarding the use of the bona fide request process arise in the future, the parties should seek the services of an impartial mediator. Only if mediation is unsuccessful should the parties return to the PSC.

WRITTEN METHODS AND PROCEDURES AND END-TO-END ELECTRONIC ORDERING FOR UNE COMBINATIONS

AT&T argues that BellSouth's lack of written methods and procedures for UNE combination ordering results from a deliberate policy of BellSouth to delay as long as possible providing UNEs in combination, even though its contract with AT&T requires that it provide them. AT&T also notes that BellSouth's system allows UNE combination orders to be submitted electronically, but that the orders "fall out" of the system for manual processing, thereby slowing the process and increasing the chance of human error.

BellSouth acknowledges that it is obligated to provide UNEs to AT&T in Kentucky pursuant to the parties' Agreement.[11] However, it contends that its processes for obtaining them are sufficient. BellSouth contends that it does in fact provide electronic

[10] Tr. at 291 (Varner)("They will have to go through us because we own the switch").

[11] Tr. at 285.

"ordering," and says the process past a certain point is appropriately characterized as "provisioning" rather than ordering. It also contends that its methods and procedures are adequate, although they are not specified in writing to AT&T and appear to be in a constant state of evolution.

At the hearing, the parties discussed in some detail the mechanics of BellSouth's UNE ordering systems and the parties' experience with them. There are, BellSouth says, approximately 300 error codes for ordering,[12] and that it is not possible for the BellSouth system to identify all "fatal" errors on an order at one time.[13] Theoretically, a single order could be returned to the sender over and over again with a different error code each time.[14] BellSouth admitted at hearing that discrepancies exist in the LEO Guide,[15] which it claims should be sufficient to enable AT&T to order UNEs, and there was lengthy testimony regarding the difficulties that have occurred during the parties' testing of UNE orders.

BellSouth admits that providing written methods and procedures would render the process easier for AT&T.[16] However, it states it is "not prepared" to create them until the Supreme Court has ruled on the UNE combinations issue.

Obviously, a great deal of time is expended in dealing with problems as they arise in piecemeal fashion. BellSouth points out that many orders were rejected

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[12] Tr. at 198.

[13] Tr. at 201.

[14] Tr. at 201.

[15] Tr. at 189.

[16] Tr. at 225.

because of elementary programming errors in AT&T's orders.[17] However, the fact that AT&T has made errors in its orders underscores the importance of providing AT&T with a set of procedures that will work and, when changes are made to the processes, providing AT&T (and other CLECs) with prior notice so they may adjust to the change rather than discovering that it has been made during the process of trying to place an order.

Some of the problems described by AT&T are, no doubt, the result of the parties' inexperience. However, BellSouth does appear to be making the ordering of UNE combinations unnecessarily difficult. At the same time, the Commission notes its concern that AT&T itself does not appear to be proceeding expeditiously to compete in BellSouth's market having, at the time of the hearing, submitted only twenty-five test orders.[18]

The Commission finds that BellSouth should formulate and issue, as expeditiously as possible, written methods and procedures for the ordering of UNE combinations. BellSouth does not dispute that it is obligated to provide UNE combinations to AT&T, and the only apparent reason for refusing to supply AT&T with a reliable roadmap to the ordering process is to make it more difficult to order them. Furthermore, AT&T should be provided with prior notice of any changes in the ordering process. In addition, BellSouth should establish an end-to-end electronic process for UNE combinations. The anti-discrimination provisions that permeate the Act prohibit BellSouth from providing service to a CLEC that is inferior to that provided to itself, and

[17] BellSouth Brief at 13.

[18] Tr. 100-101.

the current process, which includes manual handling, is lengthier and more prone to error than BellSouth's electronic process. The parties' Agreement specifies that BellSouth must provide AT&T with "the quality of service BellSouth provides itself," Agreement at Section 12.1, and that the "technology" and "processes" provided by BellSouth to AT&T must be "at least equal to the highest level that BellSouth provides or is required to provide by law and its own internal procedures."[19] Neither the law nor the Agreement appears to support BellSouth's argument that its manual procedures and an uncertain set of methods to order UNE combinations are sufficient.

CONCLUSION

The Commission notes herein the changes BellSouth should make to its policy and procedures in order to be in full compliance with the parties' Agreement and applicable law. However, the Commission does not find it necessary to require BellSouth to comply with the monitoring and reporting requirements suggested by AT&T. Should further, fact-based disputes arise concerning the issues raised in this proceeding, the parties should seek the services of a mediator before returning to this Commission. If mediation is sought, the parties should report the final result of such mediation to this Commission.

It is SO ORDERED.

[19] Agreement at Attachment 4, Section 1.2.

Done at Frankfort, Kentucky, this 6th day of November, 1998.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

DISSENT

I respectfully dissent from that portion of the Commission's Order requiring BellSouth to provide written methods and procedures and end-to-end electronic ordering for UNE combinations. We should not require an ILEC to develop procedures to provide UNE combinations when the United States Supreme Court may rule to the contrary. The better course here would have been to wait until the law on the UNE combination issue is settled.

Gary W. Gillis, Commissioner

ATTEST:

Executive Director